IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.302 of 2007

Jothilakshmi .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Fort St. George
   Chennai-600 009.

2. The District Collector
   and District Magistrate
   Tiruvallur District
   Tiruvallur. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.call for the entire records leading to the detention of the petitioner husband by name Vendatesan son of Devaraj under Act 14/82 ride detention order dated 17.2.2007 on the file of the 2nd respondent herein made in the proceedings B.DFGISSV 2/07 quash the same and consequently direct the respondents herein to procedure the body and person of the said detenu before this court.

For Petitioner : Ms.R.Subadra Devi
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

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ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner, who is the wife of the detenu, Venkatesan, son of Devaraj, who was incarcerated by order dated 17.2.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as Goonda, has

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preferred this writ petition for issue of a Writ of Habeas Corpus to call for the entire records leading to the detention of her husband under Tamil Nadu Act 14 of 1982 vide detention order dated 17.2.2007 on the file of the second respondent in the proceedings B.D.F.G.I.S.S.V.No.2/2007, to quash the same and to direct the respondents to produce the body and person of the detenu and set him at liberty.

2.1. The order of detention dated 17.2.2007 came to be passed based on the ground case said to have taken place on 1.2.2007 at about 7 p.m., complaint against which was lodged by one V.Karnan. It is alleged that while Karnan was selling guava and other fruits in a push cart, the detenu came there and demanded mamool and when the complainant questioned "Why I should give mamool?" and "Why, often you are demanding mamool?", the detenu turned down the push cart, resulting in rolling down, scattering and damage of the fruits. The detenu then took two soda bottles in the nearby petty shop and put one bottle and broke it with other and on seeing this the people surrounding scattered in fear and panic. The detenu also tried to stab the complainant with a pen knife, however the complainant prevented the detenu from doing so and during the course he sustained injuries on his left hand and blood poured out. Based on the said complaint, the Sub Inspector of Police registered a case in Gummidipoondi Police Station in Crime No.21 of 2007 under Sections 341, 294(b), 427 and 307 IPC for investigation, apprehended the detenu and now the detenu is in remand in Central Prison, Puzhal.

2.2. The second respondent, taking note of the above case as a ground case and finding that there are 6 adverse cases pending against the detenu for various offences punishable under Sections 302, 323, 324, 380, 457, 506 (ii) and 511 IPC, having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

3. Since Mrs.R.Subadra Devi, learned counsel for the petitioner challenges the impugned order of detention dated 17.2.2007 mainly on the ground of delay in considering the representation dated 27.2.2007 made on behalf of the detenu, we do not propose to go into the other aspects of the case.

4.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

4.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

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4.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

4.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

4.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

5. Coming to the the case on hand, admittedly, on receipt of the order of detention dated 17.2.2007, a representation was sent to the detaining authority on 27.2.2007, which was received by them on 28.2.2007, and remarks were called for on 1.3.2007 and the same was received on 2.3.2007. Parawar remarks were called for from the Sponsoring Authority on 2.3.2007 itself. However, the records show that the Sponsoring Authority took time from 2.3.2007 to 9.3.2007 (7 days) to submit its remarks to the Government, which is not properly explained. Even taking note of the intervening public holidays, viz., 3.3.2007 and 4.3.2007 (2 days), the delay of five days in sending the remarks to the Government is admittedly unexplained and inexcusable.

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6. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

7. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

8. In the instant case, there is delay of five days in considering the representation, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition. The order of detention dated 17.2.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sd/-
Asst.Registrar

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Sub Asst.Registrar

sasi

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To:

1. The Secretary to Government
   State of Tamil Nadu
   Prohibition and Excise Department
   Fort St. George, Secretariat
   Chennai-600 009.

2. The District Collector
   and District Magistrate
   Tiruvallur District
   Tiruvallur.

3. The Superintendent of Prison,
   Central Prison, Puzhal, Chennai.

4. The Public Prosecutor,
   High court Madras.

5. The Joint Secretary to Govt.,
   (Law & Order) Fort St.George, Chennai.9.

+ 1 cc to Mr.R.Subadradevi Advocate SR.NO.52105

SSV(CO)
RD 30.8.07

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